

FILED

1 WHATLEY DRAKE & KALLAS, LLC
Edith M. Kallas, Esq.
2 ekallas@wdklaw.com (pro hac vice forthcoming)
Joseph P. Guglielmo
3 jguglielmo@wdklaw.com (pro hac vice forthcoming)
1540 Broadway, 37th Floor
4 New York, NY 10036
Tel: (212) 447-7070
5 FAX: (212) 447-7077

2008 AUG 27 PM 3:16

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

6 ROSNER & MANSFIELD, LLP
Alan M. Mansfield, Esq. (SBN: 125998)
7 alan@rosnerandmansfield.com
10085 Carroll Canyon Road, Suite 100
8 San Diego, CA 92131
Tel: (858) 348-1005
9 FAX: (858) 348-1150

10 Attorneys for Plaintiffs

11 [Additional Counsel Appear on Signature Page]

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

RGK

15 CRESCENCIO GALVEZ, CARMEN
ACUNA, and GUADALUPE
16 GALVEZ, individually and on behalf
of all others similarly situated,

17 Plaintiffs,

18 v.

19 TOUCH-TEL U.S.A., L.P. dba
20 TOUCH-TEL USA, LLC,

21 Defendant.

Case No. **CV08-05642 (JCx)**

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR:**

- 1) VIOLATION OF §§ 17500
AND 17200 OF THE
CALIFORNIA BUSINESS &
PROFESSIONS CODE;
- 2) BREACH OF CONTRACT;
- 3) MONEY HAD AND
RECEIVED, AND UNJUST
ENRICHMENT;
- 4) VIOLATION OF § 17538.9 OF
THE CALIFORNIA
BUSINESS & PROFESSIONS
CODE; and
- 5) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

22
23
24
25
26
27 Plaintiffs Crescencio Galvez, Carmen Acuna, and Guadalupe Galvez
28 (collectively "Plaintiffs"), by and through their attorneys, bring this action against

1 defendant Touch-Tel U.S.A., L.P. ("Touch-Tel" or "Defendant"), on behalf of
2 themselves and a class of consumers (the "Class") who purchased pre-paid
3 telephone cards that were produced, sold, administered, distributed, or otherwise
4 offered to the public by Defendant between August 27, 2004 and the present (the
5 "Class Period"). Plaintiffs allege the following upon their own personal knowledge
6 and with evidentiary support where specifically so identified, or where there is no
7 personal knowledge, upon information and belief and investigation of counsel
8 formed after an inquiry reasonable under the circumstances, which allegations will
9 likely have evidentiary support after a reasonable opportunity for further
10 investigation or discovery:

11 NATURE OF THE ACTION

12 1. In direct contravention of California law that specifically details the
13 standards for advertising such products, Defendant systematically misleads
14 consumers who purchase and use pre-paid, non-rechargeable telephone cards ("pre-
15 paid calling cards") offered by Defendant, by misrepresenting the number of
16 minutes of international telephone service the cards provide and/or concealing that
17 various fees charged when consumers use the cards further reduce the number of
18 minutes available.

19 2. Plaintiffs bring this nationwide class action as a result of Defendant's
20 systematic scheme to deceive consumers who purchase and use pre-paid calling
21 cards. In violation of state statutory laws prohibiting unfair and deceptive business
22 practices, as well as in breach of their contracts with consumers, Defendant
23 perpetrates its scheme through a variety of deceptive means, as described herein.

24 3. Uniformly disseminating its conduct nationwide, Defendant sells pre-
25 paid calling cards to consumers throughout the United States. These cards
26 allegedly enable consumers to make international calls at relatively low cost as
27 compared to other sources of international telephone service. Accordingly, many
28 low-income individuals and immigrants purchase and use them to make telephone

1 calls to their home countries. Indeed, in excess of \$2 billion worth of pre-paid
2 calling cards are sold in the United States each year.

3 4. Defendant perpetrates its fraud through various means, including, *inter*
4 *alia*, misrepresenting the number of minutes of telephone service that a consumer
5 will get from a pre-paid calling card; misrepresenting the amount of telephone
6 connection time actually remaining on a pre-paid calling card when a consumer is
7 using the card; concealing when connection fees apply; employing misleading
8 marketing techniques that make it virtually impossible for consumers to compare
9 the rates and costs of using different pre-paid calling cards; misrepresenting the
10 expiration dates on pre-paid calling cards; unfairly preventing customers from
11 utilizing balances remaining on pre-paid calling cards when such balances are less
12 than the cost of a phone call including connection fees; and failing to adequately
13 disclose that Defendant charges more for calls involving wireless phones.

14 5. Defendant uniformly advertises its pre-paid calling cards as providing
15 a certain number of minutes of telephone calling time to a specific destination – for
16 example, a \$5.00 card might be advertised as providing 150 minutes of calling time
17 to Mexico from a certain location. The representations of the number of minutes a
18 given pre-paid calling card will provide to a given location are printed on
19 Defendant's advertising posters, the packaging of the pre-paid calling cards, and on
20 the cards themselves. However, as a result of Defendant's deceptive practices,
21 consumers consistently receive fewer calling card minutes than promised.

22 6. Consumers are also given automated voice prompts each time they
23 make a call with a pre-paid calling card. These prompts purport to inform
24 consumers how many minutes they have for the call, and consumers reasonably rely
25 on those voice prompts, along with Defendant's advertising, to confirm the number
26 of minutes they have purchased and how much time they have left on their pre-paid
27 calling cards after the initial use. However, as described more fully below,
28 Defendant's computer systems are pre-programmed to misrepresent the number of

1 minutes left on pre-paid calling cards. Thus, consumers are unable to know, at any
2 given time, how much time they have remaining on their pre-paid calling cards.

3 7. When consumers use their pre-paid calling cards, Defendant charges
4 them a variety of undisclosed fees and other charges that are deducted from the
5 value remaining on the card, thereby further reducing the number of telephone
6 service minutes that a consumer will be able to use.

7 8. Defendant does not inform consumers when such charges are imposed;
8 it simply deducts the amount from the value of the card, without disclosing this fact
9 to the consumer. Through these and other deceptive practices, Defendant cheats
10 users of pre-paid calling cards out of millions of dollars each year.

11 PARTIES

12 Plaintiffs

13 9. On personal knowledge, Plaintiff Crescencio Galvez resides in Los
14 Angeles, California.

15 10. On personal knowledge, during the Class Period, specifically during
16 the Summer of 2007, Mr. Galvez purchased a Touch-Tel U.S.A. pre-paid calling
17 card at Big Bear Liquor Market, 2606 E. First Street, Los Angeles, California, for
18 \$5.00. Mr. Galvez bought the card as a result of the representation that the card
19 would provide 142 minutes of call time to Mexico from Los Angeles, which was
20 printed on Touch-Tel's advertisements posted at the point-of-sale. When he used
21 his pre-paid calling card for the first time, a computerized voice prompt confirmed
22 over the telephone that he had 142 minutes of calling time to Mexico from Los
23 Angeles. However, contrary to these representations, Mr. Galvez only received
24 approximately 100 minutes of call time – or only approximately 70% of the
25 minutes advertised and represented by Defendant. Mr. Galvez thus lost money or
26 property as a result of Defendant's business practices.

27 11. On personal knowledge, Plaintiff Carmen Acuna resides in Los
28 Angeles, California.

1 12. On personal knowledge, during the Class Period, specifically, in
2 Summer of 2007, Ms. Acuna purchased a Touch-Tel U.S.A. pre-paid calling card at
3 a liquor store at 2901 E. First Street, Los Angeles, California, for \$5.00. Ms. Acuna
4 bought the card as a result of the representation that the card would provide 142
5 minutes of call time to Mexico from Los Angeles, which was printed on Touch-
6 Tel's advertisements posted at the point-of-sale. When she used her calling card for
7 the first time, a computerized voice prompt confirmed over the telephone that she
8 had 142 minutes of calling time to Mexico from Los Angeles. However, contrary
9 to these representations, Ms. Acuna only received approximately 90 minutes of call
10 time – or only approximately 63% of the minutes advertised and represented by
11 Defendant. Ms. Acuna thus lost money or property as a result of Defendant's
12 business practices.

13 13. On personal knowledge, Plaintiff Guadalupe Galvez resides in Los
14 Angeles, California.

15 14. On personal knowledge, during the Class Period, specifically, in the
16 Summer of 2007, Ms. Galvez purchased a Touch-Tel U.S.A. pre-paid calling card
17 at Stephanie Market, 2961 Fourth Street, Los Angeles, California, for \$5.00.
18 Ms. Galvez bought the card as a result of the representation that the card would
19 provide 142 minutes of call time to Mexico from Los Angeles, which was printed
20 on Touch-Tel's advertisements posted at the point-of-sale. When she used her
21 calling card for the first time, a computerized voice prompt confirmed over the
22 telephone that she had 142 minutes of calling time to Mexico from Los Angeles.
23 However, contrary to these representations, Ms. Galvez only received
24 approximately 85 minutes of call time – or only approximately 60% of the minutes
25 advertised and represented by Defendant. Ms. Galvez thus lost money or property
26 as a result of Defendant's business practices.

27 ///

28 ///

1 **Defendant**

2 15. Defendant Touch-Tel U.S.A., L.P. is a Texas corporation registered to
3 do business in the State of California, with its address at 5444 Westheimer, Suite
4 1535 Houston, Texas 77056.

5 16. Touch-Tel is in the business of servicing, manufacturing and/or
6 distributing pre-paid calling cards throughout the nation, and further creates,
7 disseminates and distributes advertising in conjunction therewith. It operates in
8 five major California markets – more than any other state – and specifically claims
9 to focus its advertising on the Latino market.

10 17. On personal knowledge, Touch-Tel's website states that it the "fastest
11 growing phone card company in the USA and its flagship product,
12 'TELECENTAVOS®' is the number one selling single phone card in the country."
13 It also boasts: "Our distribution channel has presence in Alabama, Arizona,
14 California, Colorado, Delaware, Georgia, Florida, Illinois, Maryland, New Jersey,
15 New Mexico, New York, North and South Carolina, Oklahoma, Tennessee, Texas,
16 Nevada, Virginia and Wisconsin." See <http://www.touch-tel.com/main.html> (last
17 accessed on August 26, 2008).

18 18. None of these pre-paid calling cards are regulated by a government
19 agency that would preclude the Court from providing full and complete relief to
20 members of the Class, nor is Defendant required to make any tariff filing.
21 However, Plaintiffs do not seek to change, diminish, or modify the rates and fees
22 being charged by Defendant pursuant to filings with any governmental regulatory
23 agency, to the extent such filings were previously required or may be required in a
24 particular state.

25 **JURISDICTION AND VENUE**

26 19. This Court has jurisdiction over this action pursuant to the Class
27 Action Fairness Act, 28 U.S.C. §1332 (2005), as there are more than 100 class
28 members who are located both within and outside the State of California, and

1 Plaintiffs allege that the damages suffered and sought to be recovered herein total,
2 in the aggregate, more than \$5,000,000. This Court has original jurisdiction over
3 this action under 28 U.S.C. §§ 1331, 1338 and 1367.

4 20. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a
5 substantial part of the events giving rise to the claims asserted herein occurred in
6 this District.

7 FACTS

8 Background

9 21. In the telephone service industry, pre-paid calling cards are
10 commonplace and are primarily used to make long distance and international phone
11 calls. By definition, a pre-paid calling card is a card through which a customer
12 obtains telephone service that is paid for in advance. Such cards are primarily
13 targeted and marketed to immigrants and individuals who generally do not speak
14 and read English as their primary language.

15 22. Pre-paid calling cards are sold in retail outfits such as convenience
16 stores, and are heavily promoted in immigrant communities as an affordable option
17 for people who need to make calls overseas but lack the means to obtain a cellular
18 telephone or regular long-distance and international telephone service.

19 23. Pre-paid calling cards, including those offered by Defendant, are
20 available in various dollar amounts, ranging from \$2.00 to \$100.00 per card, and
21 are sold with accompanying, uniform representations, printed on the cards
22 themselves, on point-of-sale posters, and/or on the packaging of the cards,
23 indicating how many minutes of calling time to a specific location are available on
24 the cards.

25 24. Most pre-paid calling cards are disposable, meaning that when the
26 amount of calling card minutes on the card is exhausted, the card is thrown away
27 rather than having additional dollars added to it.

28 ///

1 25. The purchaser of a calling card actually buys access to increments of
2 long distance telephone access via a fully automated computer system, commonly
3 referred to in the industry as a "platform." The platform processes various relevant
4 data points, including the value of the pre-paid calling card, the telephone rate table
5 in effect, the origin of the call and the destination of the call, and keeps records of
6 that information, allowing the company to determine, and then inform the
7 consumer, as to the amount of time he or she has for the call.

8 26. A personal identification number (PIN) and local telephone numbers to
9 call for access are commonly printed on pre-paid calling cards. Calls are made by
10 calling the access number and, upon being prompted, entering the PIN listed on the
11 card.

12 27. The PIN is used by the Defendant to keep records of how much time is
13 left on the card.

14 28. After the platform verifies the PIN, the consumer is then granted
15 access to the long distance services he or she has purchased. The consumer is
16 subsequently prompted by the platform to enter the destination telephone number
17 he or she wishes to be connected with.

18 29. After the consumer enters the destination number, an automated voice
19 prompt states the number of minutes available for the call, *e.g.*: "You have 42
20 minutes for this call." This voice prompt is generated by the platform.

21 30. Once the consumer has exhausted the increments of long distance
22 telephone services purchased, the PIN ceases to provide access to such
23 telecommunications services.

24 31. Pre-paid calling cards are popular among people who desire low cost
25 telecommunication services, such as recent immigrants and other persons having
26 long distance and international calling needs and budgetary concerns. For example,
27 persons having recently immigrated to the United States may need to communicate
28 frequently with family back in their home country, but may not have the means by

1 which to obtain or pay for long-distance service through conventional telephone
2 service arrangements. Because these groups of people tend to be heavy users of
3 international long distance, Defendant actively targets the marketing of its pre-paid
4 calling cards to them, among others. Such persons are particularly susceptible to
5 misleading advertising due to their limited English speaking and reading abilities.
6 Some of the most frequent destination countries for immigrants using pre-paid
7 calling cards to communicate with their loved ones overseas are locations such as
8 the Dominican Republic, Guatemala, Mexico, El Salvador, Colombia, Nicaragua,
9 Ecuador, Haiti, Honduras and Peru.

10 32. Many consumers use the entire balance (amount of minutes) on a pre-
11 paid calling card on their first call.

12 **Defendant's Practices**

13 33. Defendant creates, disseminates and distributes advertising to promote
14 the sale of its pre-paid calling cards, listing specific amounts of minutes available
15 depending on the value of the pre-paid calling card. Defendant's uniform
16 advertising consists of point of purchase posters, website advertising, packaging
17 and voice prompts, all of which advertising uniformly communicates to consumers
18 that they will receive certain numbers of minutes to a given location for a certain
19 cost.

20 34. As detailed below, contrary to such representations, and in
21 contravention of California law regulating such advertising, Defendant's cards do
22 not provide the minutes advertised to consumers on the face of the cards and on
23 their posters, packaging and voice prompts, nor do they properly disclose the
24 substantial surcharges imposed on the use of such cards.

25 35. Defendant also does not disclose to consumers that its cards do not
26 deliver the number of minutes promised.

27 36. The minutes actually delivered to consumers by Defendant are
28 materially less than those represented in Defendant's advertising as a result of the

1 wrongful practices described herein, resulting in a loss of money or property to
2 Plaintiffs and the Class members. Accordingly Defendant's advertising is false,
3 misleading and deceptive.

4 37. Contrary to California law, and specifically Cal. Business &
5 Professions Code §17538.9, Defendant secretly applies connection fees and other
6 charges without adequately informing consumers that such fees and charges are
7 being applied and are used to deduct from the actual value of the pre-paid calling
8 card. Defendant represents on the face of its pre-paid calling cards and in printed
9 advertisements that there are "no connection fees" or that "connection fees *may*
10 *apply*" (emphasis added), even though connection fees *will* apply in almost every
11 instance. Defendant does not say how much these fees might be. These are
12 material because a connection fee may consume as much as 40% of the value of a
13 pre-paid calling card.

14 38. Defendant also imposes charges, such as bi-weekly service charges,
15 that are automatically deducted from the value of a card, without adequately
16 informing consumers of this deduction or its amount.

17 39. Defendant also advertises low per-minute costs in order to convince
18 consumers that the overall cost of each call is low, when in fact the per-minute cost
19 of calls is materially higher when connection fees and other charges are factored in.
20 Defendant does not adequately disclose this material fact to consumers, if at all.

21 40. Defendant also represents that it provides a "toll-free" access number.
22 This representation is false, because customers using the "toll-free" number are
23 charged a higher per-minute rate than those who use local access numbers.

24 41. Defendant also misrepresents and actively conceals that it charges
25 consumers more for calls using wireless telephones than those on land line
26 telephones. All of these practices result in consumers paying more and receiving
27 less in terms of telephone talk time than represented by Defendant.

28 ///

1 **The Conduct at Issue is Centered in California**

2 42. Much of the conduct at issue arises in California. Specifically,
 3 Defendant's activities were specifically targeted to consumers in California and the
 4 sale, advertising and marketing of the pre-paid calling cards occurred in California
 5 and have been coordinated through Defendant's offices in California. Touch-Tel
 6 operates in five major California markets – more than any other state – and
 7 specifically claims to focus its advertising on the Latino market. Discovery may
 8 further establish that such conduct emanates from California to other states due to
 9 Touch-Tel's substantial presence and operations in California.

10 **CLASS ACTION ALLEGATIONS**

11 43. Plaintiffs bring this action on their own behalf and as a class action
 12 pursuant to Rules 23(b)(2) and 23 (b)(3) of the Federal Rules of Civil Procedure on
 13 behalf of the following proposed class:

14 All persons who purchased between August 27, 2004 to the present
 15 (the "Class Period") pre-paid calling cards that were produced, sold,
 16 administered, distributed, or otherwise offered to the public by
 17 Defendant (the "Class").

18 44. Upon completion of discovery with respect to the scope of the Class or
 19 Class, Plaintiffs reserve the right to amend the Class Period and/or the Class
 20 definition.

21 45. Excluded from the Class are Defendant, its parents, subsidiaries and
 22 affiliates, its directors and officers and members of its immediate families, the
 23 Court, the Court's spouse, all persons within the third degree of relationship to the
 24 Court and its spouse, and the spouses of all such persons.

25 **Numerosity:**

26 46. The members of the Class are so numerous and geographically diverse
 27 that joinder of all of them is impracticable. While the exact number and identities
 28 of members of the Class are unknown to Plaintiffs at this time and can only be

1 ascertained through appropriate discovery, based on Defendant's representations
 2 and the scope of its advertising, there are thousands of Class members throughout
 3 the United States.

4 **Commonality:**

5 47. There are questions of fact and law common to the members of the
 6 Class, which predominate over any individual questions of law or fact, including
 7 but not limited to the following:

- 8 • Whether Defendant has systematically provided false, untrue or
 9 misleading information in connection with the sale of its pre-paid
 10 calling cards, including, but not limited to, the amount of telephone
 11 service time available on the cards and the existence and extent of
 12 charges associated with the use of the pre-paid calling cards;
- 13 • Whether Defendant has systematically failed to adequately disclose
 14 material information on its pre-paid calling cards that is required to be
 15 disclosed under California law, including, but not limited to, all
 16 charges associated with the use of the cards;
- 17 • Whether Defendant has violated relevant state consumer laws through
 18 its wrongful practices;
- 19 • Whether Defendant has breached its contracts with Plaintiffs and the
 20 Class through its wrongful practices;
- 21 • Whether Defendant has been unjustly enriched through its wrongful
 22 practices;
- 23 • Whether Plaintiffs and the members of the Class have sustained
 24 damages or injuries by reason of Defendant's wrongful practices, and
 25 if so, the proper measure of such damages or injuries;
- 26 • Whether Plaintiffs and members of the Class are entitled to injunctive
 27 and/or other equitable relief; and

28 ///

- Whether Plaintiffs and the members of the Class are entitled to declaratory relief.

Typicality:

48. Plaintiffs' claims are typical of the claims of the other members of the Class, in that Plaintiffs aver a common course of conduct by Defendant towards themselves and members of the Class. Plaintiffs, like other members of the Class, purchased pre-paid calling cards and did not receive the full value represented by Defendant, and suffered damages and/or lost money or property as a result of Defendant's wrongful practices as detailed above.

Adequacy:

49. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' claims are coextensive with, and not antagonistic to, the claims of the other members of the Class. Plaintiffs are willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiffs have retained competent and experienced counsel who satisfy the requirements of Rule 23(g).

50. Plaintiffs bring this action under Rule 23(b)(3) because common questions of law and fact predominate over issues that are individual to members of the Class. In addition, the expense of litigating each Class members' claims individually would be so cost prohibitive as to deny Class members a viable remedy. Certification under Rule 23(b)(3) is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiffs envision no unusual difficulty in the management of this action as a class action as Defendant would or should retain records of the amount of deductions and overcharges made on Class members' calling cards. Notice of the pendency of this action and any resolution thereof can be accomplished by a combination of publication and direct notice to those Class members whose names and addresses are on file with Defendant.

///

1 or property. They are thus entitled to the remedies available under the Unfair
 2 Competition Law, including restitution and disgorgement, appropriate preliminary
 3 and permanent injunctive relief and imposition of a constructive trust, and such
 4 other and further relief as the Court may deem proper.

5 **COUNT II**

6 **Unlawful, Fraudulent and Unfair Business Practices Under § 17200 of the** 7 **California Business & Professions Code**

8 57. Plaintiffs repeat and re-allege the allegations set forth in the above
 9 paragraphs as if fully set forth herein.

10 58. Defendant has engaged in unlawful business acts and practices, as set
 11 forth in detail above, in connection with its pre-paid calling card business by
 12 engaging in conduct in violation of Sections 17200, *et seq.* and 17500, *et seq.*,
 13 including Section 17538.9, of the California Business & Professions Code,
 14 California Civil Code §1750, *et seq.*, and the other laws identified herein. Plaintiffs
 15 reserve the right to identify additional violations of laws as circumstances warrant.

16 59. Defendant's conduct is likely to mislead consumers with respect to the
 17 number of minutes they receive for the price they pay, resulting in its engaging in
 18 fraudulent business acts and practices.

19 60. Defendant's acts and practices described herein have caused deception
 20 of the public, misleading prospective purchasers and targeted consumers as to the
 21 true characteristics and qualities of Defendant's products. The gravity of such
 22 conduct outweighs any justification therefor. The prohibition of such conduct is
 23 tethered to a legislative policy as set forth in Section 17358.9. Defendant has thus
 24 engaged in an unfair business act or practice.

25 61. As a result of Defendant's conduct as alleged above, Plaintiffs and
 26 members of the Class have been injured in fact and have lost money or property.
 27 They are thus entitled to the remedies available under the Unfair Competition Law,
 28 including restitution and disgorgement, appropriate preliminary and permanent

1 injunctive relief and imposition of a constructive trust, and such other and further
2 relief as the Court may deem proper.

3 COUNT III

4 *Breach of Contract*

5 62. Plaintiffs repeat and re-allege the allegations set forth in the above
6 paragraphs as if fully set forth herein.

7 63. Defendant sold pre-paid calling cards to Plaintiffs and the members of
8 the Class pursuant to the terms and conditions set forth on the face of the cards and
9 in Defendant's advertising.

10 64. The point-of-sale representations of the costs of using the cards and the
11 number of calling minutes provided constitute a legally binding offer, and
12 Plaintiffs' and Class members' acceptance of those terms by the use of such cards
13 constitutes a legally binding acceptance, pursuant to valid consideration paid.
14 Accordingly, legally binding contracts were created between Defendant and
15 Plaintiffs and Class members who bought its pre-paid calling cards.

16 65. Defendant breached its contracts with Plaintiffs and Class members
17 through the conduct described above.

18 66. As a result of Defendant's breach of contract, the actual per-minute
19 cost of calls made using its pre-paid calling cards was much higher than the
20 contractually-agreed to price because of additional material charges and methods of
21 computation that were not properly disclosed.

22 67. As a result of Defendant's breach of contract, Plaintiffs and members
23 of the Class have been damaged in an amount to be determined at trial, and are
24 entitled to compensatory damages plus interest, costs, and other such additional
25 monetary or equitable relief as is deemed proper by the Court.

26 ///

27 ///

28 ///

COUNT IV

Money Had and Received and Unjust Enrichment

68. Plaintiffs repeat and re-allege the allegations set forth in the above paragraphs as if fully set forth herein.

69. As the result of Defendant's illegal agreements, representations and omissions as detailed above, Plaintiffs and Class members paid money and conferred a benefit upon Defendant that was originally in the Class members' possession as a result of fraud, payment under compulsion or mistake. Defendant received and retained this benefit under such circumstances that it would be inequitable and unconscionable to permit Defendant to retain this benefit without returning its reasonable value to Plaintiffs and the Class members. In fairness, all such monies, including all interest Defendant has earned on such monies while in wrongful possession thereof, should be paid to members of the Class.

70. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and Class members suffered injury, and therefore seek an order directing Defendant to return the amount each of them improperly were required to pay to Defendant, plus interest thereon, as well as impose a constructive trust over such monies.

COUNT V

For Declaratory Relief

71. Plaintiffs repeat and re-allege the allegations set forth in the above paragraphs as if fully set forth herein.

72. An actual controversy over which this Court has jurisdiction now exists between the Class members and Defendant concerning their respective rights, duties and obligations for which Plaintiffs desire a declaration of rights under the applicable contracts.

73. Plaintiffs contend that Defendant is obligated to refund all monies improperly collected by Defendant or improperly retained by it in violation of

1 California law, and that any contractual provisions limiting their rights to obtain the
 2 full relief sought herein that Defendant may claim applies to these claims is
 3 unconscionable and illegal and thus unenforceable under the applicable law.
 4 Plaintiffs desire a judicial determination and declaration of the parties' respective
 5 rights, duties and obligations.

6 74. A judicial declaration is necessary and appropriate at this time under
 7 the circumstances in order that the parties may ascertain their respective rights and
 8 duties. Plaintiffs and Class members have been injured in fact at the time of or
 9 since their purchases and have standing to seek such a judicial determination.

10 75. As a result, Plaintiffs and the Class seek and are entitled to the relief as
 11 detailed below as applicable to this cause of action.

12 COUNT VI

13 *For Violations of Section 17538.9 of California* 14 *Business and Professions Code*

15 76. Plaintiffs repeat and re-allege the allegations set forth in the above
 16 paragraphs as if fully set forth herein.

17 77. Defendant has engaged in unlawful business acts and practices, as set
 18 forth in detail above, in connection with its pre-paid calling card business by
 19 engaging in conduct in violation of Section 17538.9 of the California Business and
 20 Professions Code, which states as follows:

21 (a) For the purposes of this section:

22 (1) "Company" refers to any entity providing prepaid calling
 23 services to the public using its own or a resold telecommunications network.

24 (2) "Prepaid calling services" or "services" refers to any prepaid
 25 telecommunications service that allows consumers to originate calls through
 26 an access number and authorization code, whether manually or
 27 electronically dialed.

28 ///

1 (3) "Prepaid calling card" or "card" means any object containing an
2 access number and authorization code that enables a consumer to use
3 prepaid calling services. It does not include any object of that type used for
4 promotional purposes.

5 (4) "Cellular telephone services" means facilities-based,
6 commercial mobile telephone services.

7 (b) The following standards and requirements for consumer disclosure
8 and services shall apply to the advertising and sale of prepaid calling cards and
9 prepaid calling services:

10 (1) Any advertisement of the price, rate, or unit value in connection
11 with the sale of prepaid calling cards or services shall include a disclosure of
12 any geographic limitation to the advertised price, rate, or unit value, as well
13 as a disclosure of any additional surcharges, call setup charges, or fees or
14 surcharges applicable to the advertised price, rate, or unit value.

15 (2) The following information shall be legibly printed on the card:

16 (A) The name of the company.

17 (B) A toll-free customer service number.

18 (C) A toll-free network access number, if required to access
19 service.

20 (D) The authorization code, if required to access service.

21 (E) The expiration date or policy, if applicable, except where
22 paragraph (8) applies.

23 (3) The company shall print legibly on the card or packaging, and
24 the vendor shall make available clearly and conspicuously in a prominent
25 area immediately proximate to the point of sale of the prepaid calling card or
26 prepaid calling services the following information:

27 (A) The value of the card and any surcharges, taxes, or fees,
28 including monthly or other periodic fees, maintenance fees, per-call

1 access fees, surcharges for calls made on pay telephones, or
2 surcharges for the first minute or other period of use that may be
3 applicable to the use of the prepaid calling card or prepaid calling
4 services within the United States.

5 (B) Any surcharges for international calls or, in lieu of
6 disclosing each surcharge, the highest surcharge for any international
7 calls applicable on that card and any additional or different prices,
8 rates, or unit values applicable to international usage of the prepaid
9 calling card or prepaid calling services.

10 (C) The minimum charge per call, such as a three-minute
11 minimum charge, if any.

12 (D) The definition of the term "unit," if applicable.

13 (E) The billing decrement.

14 (F) The name of the company.

15 (G) The recharge policy, if any.

16 (H) The refund policy, if any.

17 (I) The expiration policy, if any.

18 (J) The 24-hour customer service toll-free telephone number
19 required in paragraph (6).

20 (4) If a language other than English is used on the card or
21 packaging to provide dialing instructions to place a call or to contact
22 customer service, the information required by paragraph (3) shall also be
23 disclosed in that language in the point of sale disclosure in the manner
24 described in paragraph (3).

25 (5) If a language other than English is used in the advertising or
26 promotion of the card or prepaid calling services or is used on the card or
27 packaging other than for dialing instructions, the information required by
28 paragraph (3) shall also be disclosed in that language on the card or

1 packaging and in the point of sale disclosure in the manner described in
2 paragraph (3).

3 (6) A company shall establish and maintain a toll-free customer
4 service telephone number that shall meet the following requirements:

5 (A) A live operator shall answer incoming calls to the
6 telephone number 24 hours a day, seven days a week.

7 (B) The telephone number shall have sufficient capacity and
8 staffing to accommodate a reasonably anticipated number of calls
9 without incurring a busy signal or undue wait. The company shall
10 provide customer service in each language used on a prepaid calling
11 card or its packaging and in the advertising or promotion of the
12 prepaid calling card or prepaid calling services.

13 (C) The telephone number shall allow consumers to lodge
14 complaints and obtain information on all of the following:

15 (i) All rates, surcharges, and fees.

16 (ii) The company's recharge, refund, and expiration
17 policies.

18 (iii) The balance of use available in the consumer's
19 account, if applicable.

20 (D) A company shall not impose a fee or surcharge related to
21 obtaining customer service, including any charge related to
22 connecting with the customer service number or waiting to speak to a
23 live operator. A company offering prepaid cellular telephone services
24 shall be deemed to be in compliance with the requirements of this
25 paragraph if, when a request for information is made outside of
26 normal business hours, that company provides the information
27 requested on the next business day.

28 ///

1 (7) A company that issues prepaid calling cards or prepaid calling
2 services shall provide a refund to any purchaser of a prepaid calling card or
3 prepaid calling services if the network services associated with that card or
4 services fail to operate in a commercially reasonable manner. The refund
5 shall be in an amount not less than the value remaining on the card or in the
6 form of a replacement card, and shall be provided to the consumer within 60
7 days from the date of receipt of notification from the consumer that the card
8 has failed to operate in a commercially reasonable manner.

9 (8) Cards without a specific expiration date or policy printed on the
10 card, and with a balance of service remaining, shall be considered active for
11 a minimum of one year from the date of purchase, or if recharged, from the
12 date of the last recharge.

13 (9) In the case of prepaid calling cards or services utilized at a pay
14 phone, the company may provide voice prompt notification of any
15 applicable pay phone surcharges, in lieu of providing notice of surcharges as
16 required by paragraph (1) and by subparagraph (A) of paragraph (3),
17 provided that the company provides users of prepaid calling cards or
18 services with reasonable time to terminate the call after notification of
19 applicable pay phone surcharges without incurring any charge for the call.

20 (10) A company shall maintain access numbers with sufficient
21 capacity to accommodate a reasonably anticipated number of calls without
22 incurring a busy signal or undue delay.

23 (11) A company may not impose any fee or surcharge that is not
24 disclosed as required by this section or that exceeds the amount disclosed by
25 the company.

26 ///

27 ///

28 ///

1 (12) A company may not impose any charges if the consumer is not
2 connected to the number called. For the purpose of this paragraph, the
3 customer shall not be considered connected to the number called if the
4 customer receives a busy signal or the call is unanswered.

5 (13) The value of the card and the amount of the various charges,
6 however denominated, that are required to be disclosed by paragraph (3),
7 shall be expressed in the same format. If the value of a card is expressed in
8 minutes, the minutes shall be identified as domestic or international and the
9 identification shall be printed on the same line or next line as the value of the
10 card in minutes.

11 78. Defendant has violated Section 17538.9 of the California Business and
12 Professions Code by engaging in certain prohibited practices, including, *inter alia*:
13 a) misrepresenting the number of minutes of telephone service that a consumer will
14 get from a pre-paid calling card; b) misrepresenting the amount of telephone
15 connection time actually remaining on a calling card when a consumer is using the
16 card; c) concealing when connection fees apply; d) employing misleading
17 marketing techniques that make it virtually impossible for consumers to compare
18 the rates and costs of using different pre-paid calling cards; e) misrepresenting the
19 expiration dates on pre-paid calling cards; f) unfairly preventing customers from
20 utilizing balances remaining on pre-paid calling cards when such balances are less
21 than the cost of a phone call including connection fees; and g) failing to adequately
22 disclose that Defendant charges more for calls involving wireless phones.

23 79. As a result of Defendant's conduct as alleged above, Plaintiffs and
24 members of the Class have been injured in fact and have lost money or property.
25 They are thus entitled to the remedies available under the Unfair Competition Law,
26 including restitution and disgorgement, appropriate preliminary and permanent
27 injunctive relief and imposition of a constructive trust, and such other and further
28 relief as the Court may deem proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request, on behalf of themselves and all members of the Class against Defendant for the injuries sustained by reason of each of the causes of action set forth above, an Order providing as follows, as appropriate for the particular cause of action:

1. An order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel of record to represent the proposed plaintiff Class;

2. Equitable relief enjoining Defendant from engaging in the wrongful conduct complained of herein, requiring Defendant to issue complete and accurate disclosures, requiring restitution and disgorgement of the revenues wrongfully collected thereby and/or imposing a constructive trust on the revenues wrongfully obtained by Defendant, and providing a judicial declaration of the rights and obligations of the parties;

3. An accounting of all monies wrongfully received by Defendant as a result of the conduct complained of herein;

4. Damages in an amount to be determined at trial;

5. Attorneys' fees, disbursements and costs of this action under, *inter alia*, Code of Civil Procedure §1021.5; and

6. Such other favorable relief as this Court may deem just, equitable, or proper.

DATED: August 26th, 2008

ROSNER & MANSFIELD, LLP

By: 

ALAN M. MANSFIELD
alan@rosnerandmansfield.com

10085 Carroll Canyon Road, First Floor
San Diego, CA 92131
Tel: (858) 348-1005
Fax: (858) 348-1150

1 WHATLEY DRAKE & KALLAS, LLC
2 Edith M. Kallas
ekallas@wdklaw.com
3 Joseph P. Guglielmo
jguglielmo@wdklaw.com
4 1540 Broadway, 37th Floor
New York, NY 10036
5 Tel: (212) 447-7070
Fax: (212) 447-7077

6 WOOD LAW FIRM, LLC
7 E. Kirk Wood (ASB-2937-W55E)
ekirkwood1@cs.com
8 2900 1st Avenue South, Suite A
Birmingham, AL 35233
9 Tel: (205) 612-0243

10 LAW OFFICES OF ARCHIE LAMB, LLC
11 Archie Lamb, Jr.
alamb@archielamb.com
12 2017 Second Avenue North, 2nd Fl.
Birmingham, AL 36117

13 LAW OFFICES OF GREG L. DAVIS
14 Greg L. Davis
gldavis@knology.net
15 6987 Halcyon Park Drive
Montgomery, AL 36117

16 Howard Rubenstein
17 Attorney at Law
howardr@pdq.net
18 914 Waters Avenue, Suite 20
Aspen, Colorado 81611

19 Attorneys for Plaintiffs

20
21 JURY DEMAND

22 Plaintiffs demand a trial by jury of all claims so triable.

23 DATED: August 26, 2008

ROSNER & MANSFIELD, LLP

24 By: 

25 ALAN M. MANSFIELD
alan@rosnerandmansfield.com

26 Attorneys for Plaintiffs
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge R. Gary Klausner and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV08- 5642 RGK (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[] Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[] Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ROSNER & MANSFIELD, LLP
Alan M. Mansfield, Esq. (SBN: 125998)
alan@rosnerandmansfield.com
10085 Carroll Canyon Rd., Suite 100
San Diego, CA 92131
Tel: (858) 348-1005 / Fax: (858) 348-1150

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRESCENCIO GALVEZ, CARMEN ACUNA, and
GUADALUPE GALVEZ, individually and on behalf
of all others similarly situated,

PLAINTIFFS,

v.

TOUCH-TEL U.S.A., L.P. dba TOUCH-TEL USA,
LLC,

DEFENDANT(S).

CASE NUMBER

CV08-05642 RGK (JCx)

SUMMONS

TO: DEFENDANT(S): TOUCH-TEL U.S.A., L.P.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, ALAN M. MANSFIELD, whose address is 10085 Carroll Canyon Rd., Suite 100, San Diego, CA 92131. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

NATALIE LONGORIA

Dated: AUG 27 2008

By: _____

Deputy Clerk



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1198

COPY